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25
26 **UNITED STATES DISTRICT COURT**
27 **DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

HEALTH FORMULAS, LLC, *et al.*,

Defendants.

Case No. 2:14-cv-1649-RFB-GWF

**CONSENT MOTION FOR ENTRY
OF AGREED PROTECTIVE
ORDER**

1 Plaintiff Federal Trade Commission (“FTC”) hereby moves this Court for entry of the
2 accompanying proposed agreed protective order (“Agreed Protective Order”). All defendants
3 and the temporary receiver appointed by the Court in this case consent to the entry of this Agreed
4 Protective Order.

5 In support of this Consent Motion, the FTC states as follows:

- 6 1. The parties seek a protective order to ensure that trade secrets, confidential
7 research, development, or commercial information, and sensitive personal
8 information, including Social Security numbers, passport numbers, and sensitive
9 health data, in this matter will remain confidential and secure.
- 10 2. The Agreed Protective Order provides, among other things, that all parties shall
11 keep trade secrets, confidential research, development, or commercial
12 information, and sensitive personal information, secure and shall only use such
13 materials for the litigation of the above-captioned case.
- 14 3. The Agreed Protective Order is reasonable and necessary to prevent dissemination
15 of confidential commercial information and sensitive personal information that
16 could be used for wrongful purposes, including identity theft. Accordingly, the
17 Agreed Protective Order is warranted pursuant to Rule 26(c) of the Federal Rules
18 of Civil Procedure.
- 19 4. All of the parties agree that the Agreed Protective Order should be entered. The
20 CSC Defendants¹ consented to the entry of the Agreed Protective Order on June
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27 ¹ Defendants Chapnick, Smukler, & Chapnick, Inc., Brandon Chapnick, and Keith Smukler
(collectively, the “CSC Defendants”).

2, 2015. The Miller Defendants² consented to the entry of the Agreed Protective Order on June 3, 2015. The temporary receiver consented to the entry of the Agreed Protective Order on June 4, 2015.

Based on the foregoing, the FTC respectfully requests that the Court enter the accompanying Agreed Protective Order.

Dated: June 4, 2015.

Respectfully submitted,

/s/Melissa L. Dickey

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² Defendants Health Formulas, LLC; Pure Vitamins, LLC; Longhorn Marketing, LLC; Method Direct, LLC; Weight Loss Dojo, LLC; VIP Savings, LLC; DJD Distribution, LLC; MDCC, LLC; 458 Media LLC; Alpha Brands, LLC; Blu Stella, LLC; Brilliant Skin LLC; Discount Provisions L.L.C.; Extamax, LLC; F12 Media LLC; Flex Formulas, LLC; GCB Marketing LLC; Luminous Skin LLC; Men's Health Formulas, LLC; Metabolic Labs, LLC; Miracle Male, LLC; Moringa Marketing LLC; Northbound Marketing LLC; Skinny 7 LLC; Wellness Labs, LLC; Yacon Marketing LLC; Barrel Roll, LLC; BSC Marketing, LLC; Cherry Hill Marketing, LLC; CSA Ventures, LLC; Diet Concepts, LLC; Health Products Direct LLC; KMS Marketing LLC; Natural Products Direct LLC; Northern Health Products LLC; Pure and Natural Health Products LLC; Pure and Simple Health Products LLC; Radiant Skin LLC; Shimmering Skin LLC; Tindy Films LLC; Wellness Products, LLC; Method Films, Inc.; Danelle Miller; and Jason Miller (collectively, the "Miller Defendants").

Certificate of Service

I hereby certify that on June 4, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send a notice of electronic filing to all counsel of record.

Date: June 4, 2015

/s/ Melissa L. Dickey

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

HEALTH FORMULAS, LLC, *et al.*,

Defendants.

Civil Action No. 2:14-cv-01649-RFB-GWF

AGREED PROTECTIVE ORDER

1 The Court enters this protective order pursuant to Fed. R. Civ. P. 26(c).

2 1. An attorney marking material as “Confidential Material” certifies in good faith
3 that it contains (a) Sensitive Personal Information, or (b) trade secret(s) or other confidential
4 research, development, or commercial information.

5 2. “Sensitive Personal Information” means any (a) Social Security number; (b)
6 sensitive health-related data including medical records; (c) biometric identifier; or (d) any one or
7 more of the following when combined with an individual’s name, address, or phone number: (i)
8 date of birth, (ii) driver’s license or other state identification number, or a foreign equivalent, (iii)
9 military identification number, (iv) passport number, (v) financial institution account number,
10 (vi) credit or debit card number; or (e) other sensitive information relating to an individual
11 entitled to confidential status under applicable law, by order of this Court, or by agreement of the
12 parties.

13 3. Confidential Material must be designated as follows:

14 a. Mark paper materials “CONFIDENTIAL.” If paper material is only
15 confidential in part, mark only the portions of the material that are confidential.

16 b. Mark electronic materials “CONFIDENTIAL” by marking each electronic
17 page or subpart that is confidential. If the electronic material cannot be marked by page
18 or subpart, the designee shall meet and confer with the recipient to determine a means to
19 delineate the confidential material. Also mark the electronic storage medium, as well as
20 any electronic file and folder name CONFIDENTIAL.

21 c. Designate deposition transcripts as Confidential Material within 10 days
22 of receipt of the final transcript by identifying the specific page(s) and line number(s) that
23 are confidential. If testimony is identified as confidential during a deposition, absent
24 agreement on the scope of confidentiality, the entire transcript shall be treated as
25 confidential until the time for designation expires.

1 4. An inadvertent failure to mark Confidential Material prior to disclosure does not
2 preclude a subsequent designation, but no prior disclosure of newly designated Confidential
3 Material by a recipient shall violate this Order.

4 5. Within ten (10) days of a written objection to the designation of Confidential
5 Material, the designating party must move the Court to uphold the designation. The burden of
6 proving that the designation is proper is on the designating party. Failure to seek timely an order
7 upholding the designation terminates confidential treatment.

8 6. Confidential Material, and any information copied or extracted therefrom, may
9 only be disclosed to:

- 10 a. the Court and court personnel;
- 11 b. the parties' outside counsel and designated employees only to the extent
12 necessary to assist in the litigation;
- 13 c. the Temporary Receiver appointed by the Court, and its employees,
14 provided that each employee agree in writing to abide by this protective order;
- 15 d. experts and contractors consulted or retained by the parties or counsel, and
16 their employees, provided that they agree in writing to abide by this protective order or
17 execute FTC Form X33-Nondisclosure Agreement for Contractors;
- 18 e. any person who had prior access to the Confidential Material or
19 participated in a communication that is the subject of the Confidential Material; and
- 20 f. witnesses and their counsel, provided that they agree in writing to abide by
21 this protective order.

22 7. Disclosure of confidential material or any information copied or extracted
23 therefrom to any person described in Paragraph 6 shall be only for the purposes of the
24 preparation and hearing of this proceeding, or any appeal, therefrom, and for no other purpose
25 whatsoever. Provided, however, that the Commission may, subject to taking appropriate steps to

1 preserve the confidentiality of such material, use or disclose confidential material as provided by
2 its Rules of Practice; sections 6 and 21 of the Federal Trade Commission Act; or any other legal
3 obligation imposed upon the Commission.

4 8. Confidential Material shall only be filed with a motion to seal the material, unless
5 the party introducing the material provides the designee notice of its intention to publicly file the
6 material at least 14 days in advance of filing to provide an opportunity for the designee to seek
7 further protection from the Court. If the designee seeks protection within the 14 days, the
8 materials may only be filed with a motion to seal until the Court has ruled on the designee's
9 request.

10 9. At the conclusion of this case, any consultant or other person retained to assist
11 counsel in the preparation of this action shall destroy or return all Confidential Materials and any
12 other materials containing confidential information. All Confidential Materials held by the
13 parties shall be destroyed or returned to the designee, except that the FTC shall retain, return, or
14 destroy Confidential Materials in accordance with Rule 4.12 of the FTC's Rules of Practice.

15 10. This Order continues to govern Confidential Information after conclusion of the
16 case absent further order of the Court.

17 11. The terms of this Protective Order are applicable to information produced by a
18 Party or Non-Party in this action and designated as "CONFIDENTIAL."

19 12. Such information produced by Non-Parties in connection with this litigation is
20 protected by the remedies and relief provided herein. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

1 13. The provisions of this order governing disclosure and use of the documents by the
2 defendants shall not terminate at the conclusion of this case. The obligation in this order to
3 protect materials containing Confidential Information shall continuously bind all defendants and
4 persons described in Paragraph 6.

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7 **IT IS SO ORDERED:**

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9 _____
10 THE HONORABLE GEORGE FOLEY, JR.
11 UNITED STATES MAGISTRATE JUDGE

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DATED: June 5, 2015